

The Honorable Benjamin H. Settle

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JEFFREY REICHERT and GARY MOYER,
both individually and on behalf of all
others similarly situated,

Plaintiffs,

v.

KEEFE COMMISSARY NETWORK, L.L.C.
d/b/a ACCESS CORRECTIONS; RAPID
INVESTMENTS, INC., d/b/a RAPID
FINANCIAL SOLUTIONS, d/b/a ACCESS
FREEDOM; and CACHE VALLEY BANK,

Defendants.

NO. 3:17-cv-05848-BHS

ORDER:

- (1) PRELIMINARILY APPROVING
SETTLEMENT AGREEMENT;
- (2) APPROVING WRITTEN CLASS
NOTICE;
- (3) ESTABLISHING A PROCESS TO
APPOINT NOTICE AND CLAIMS
ADMINISTRATOR AND
CONSIDER PUBLISHED NOTICE
PACKAGE; AND
- (4) ESTABLISHING A FINAL
SETTLEMENT APPROVAL
HEARING AND PROCESS

Noted for Consideration:
August 22, 2023

Upon consideration of Plaintiffs' motion ("Motion") pursuant to Federal Rule of Civil Procedure 23(e) for an order preliminarily approving a settlement involving the National Class (as defined in Dkt No. 87, p. 6) and Washington State Subclass (as defined in Dkt. No. 87, pp. 6, 25) (collectively "Class") in relation to their claims against defendants Rapid Investments, Inc. and Cache Valley Bank (collectively "Defendants") and in accordance with the Parties' Settlement Agreement dated as of June 14, 2023 and

ORDER PRELIMINARILY APPROVING
SETTLEMENT AGREEMENT, ETC. - 1
[Case No. 3:17-cv-05848-BHS]

SIRIANNI YOUTZ
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1 the addendum dated July 27, 2023 (the “Agreement”), which sets forth the terms and
 2 conditions for a proposed partial settlement of the action, and the Court having read and
 3 considered the Agreement, the Motion and the Declarations of Richard E. Spoonemore
 4 and Cameron R. Azari ORDERS as follows:¹

5 1. Based on the record before it, the Court tentatively finds, pursuant to
 6 Federal Rule of Civil Procedure 23(e), that the Agreement attached as *Appendix 1* (Dkt.
 7 No. 210-1) and *Appendix 2* (Dkt. No. 210-2) to the Motion is fair, reasonable, and
 8 adequate. The Court finds that: (a) the Agreement resulted from extensive arm’s length
 9 negotiations; (b) there is no evidence at this stage of the proceedings of fraud, collusion,
 10 or overreaching or that the rights of eligible absent class members were disregarded; and
 11 (c) counsel has sufficient experience in similar litigation to propose the Agreement. The
 12 Agreement appears to provide substantial compensation to class members. The Court’s
 13 preliminary approval is subject to change pending the outcome of the final settlement
 14 approval hearing (“Fairness Hearing”) established herein.

15 2. The Court finds that the proposed mailed postcard notice (“Short-Form
 16 Notice”), attached as *Appendix 3* (Dkt. No. 210-3), and the long-form notice (“Long-Form
 17 Notice”), attached as *Appendix 4* (Dkt. No. 210-4), to the Motion meet the requirements
 18 of Federal Rule of Civil Procedure 23, due process, and the applicable law in that they
 19 fairly and adequately provide notice of the terms of the Agreement, including the
 20 attorneys’ fees and costs sought by Sirianni Youtz Spoonemore Hamburger PLLC
 21 (“Class Counsel”) and the request for case contribution awards to the class
 22 representatives; gives notice of the time and place of the Fairness Hearing; and describes
 23 how eligible class members may opt-out, comment on, object to, or support the
 24

25 _____
 26 ¹ The initial capitalization of terms used in this Order and not defined herein shall have the meanings
 assigned to them in the Agreement.

1 Agreement. The Court finds that the ability of eligible class members to file claims online
 2 or by mail provides eligible class members with a reasonable and straightforward
 3 method to file claims.

4 3. The Court preliminary finds that the distribution plan set forth in the
 5 Agreement is fair and reasonable. Under that plan, class members who incurred fees on
 6 Release Cards subject to this dispute are entitled to make a claim of \$15 plus up to three
 7 times the fees they incurred from the commencement date of each facility's use of Release
 8 Cards during the class period to March 1, 2023. (To avoid duplicative recoveries, any
 9 distribution previously received by a class member in the Keefe Settlement approved by
 10 this Court on November 11, 2022, *see* Dkt. No. 179, will offset any payments due under
 11 the Agreement at issue here.) Claims will be paid from a \$11,000,000 settlement fund
 12 after deduction of the costs of initial class notice, administration and notice expenses of
 13 this settlement, court-awarded attorney's fees and costs, and case contribution awards,
 14 if awarded by the Court. If an additional amount is needed to pay claims in full as
 15 described above, Defendants will pay up to an additional \$600,000 if needed. If
 16 \$11,600,000 is insufficient to pay all claims in full after fees and costs, then each eligible
 17 class member's claim shall be paid on a *pro rata* basis with all other claimants. If less than
 18 \$11,000,000 is disbursed, then any remaining funds up to \$11,000,000 shall be paid to one
 19 or more *cy pres* recipients approved by the Court. The Court's preliminary approval of
 20 this process is subject to change after the notice and comment period.

21 4. No later than ten (10) days after the date of this Order, Defendants shall
 22 provide notices and materials required under the Class Action Fairness Act ("CAFA"),
 23 28 U.S.C. § 1715(b). Defendants shall submit a declaration confirming their compliance
 24 with the CAFA requirements.

25 5. In light of the significant costs involved in the notice and claims
 26 administration contemplated by the Agreement, the Court defers naming a Notice and

1 Claims Administrator until Class Counsel concludes its competitive vetting of
 2 companies to efficiently perform the notice and claims administration duties. Class
 3 Counsel shall make a recommendation to the Court for the appointment of a Notice and
 4 Claims Administrator within 21 days of the date of this Order. As part of that
 5 recommendation, Class Counsel shall propose a publication plan in order to provide
 6 supplemental notice in addition to the written mailed notice approved by this Order. In
 7 the event the recommended Notice and Claims Administrator proposes or recommends
 8 any substantive changes to the written notice and claims process approved by this Order,
 9 those changes shall be listed in the recommendation filed by Class Counsel for the
 10 Court's consideration and approval.

11 6. Class Counsel or its designee shall establish a settlement web page
 12 available to the public within 30 days of the date of this Order. The web page shall
 13 contain the Settlement Agreement, Class Notice, claims forms, claim form instructions,
 14 a description of the action, deadlines, and key pleadings (including, without limitation,
 15 the motions for approval and order preliminarily approving the agreement).

16 7. A Fairness Hearing to consider whether the proposed Agreement is fair,
 17 reasonable, and adequate and should be finally approved is scheduled for December 18,
 18 2023, at 2:30 p.m. at the United States Courthouse, 1717 Pacific Ave., Tacoma, WA 98402.

19 8. Any class member who wishes to comment on or object to the Agreement
 20 must submit written comments and/or objections to the Court no later than December
 21 4, 2023.

22 9. Any class member who wishes to opt-out of the Agreement shall do so no
 23 later than December 4, 2023.

24 10. A class member who wishes to appear at the Fairness Hearing may do so
 25 if he or she submits written notice to the Court, with copies to counsel, that he or she
 26 intends to appear in person or through counsel. In that written notice to appear, the

1 class member must describe the nature of his or her comment or objection. Written
 2 notice of intent to appear must be filed with the Court and mailed to counsel by
 3 December 4, 2023.

4 11. A Motion for Final Approval of the Agreement, together with any
 5 supporting declarations or other documentation, must be filed no later than December
 6 11, 2023. Class Counsel shall also mail or email the Motion for Final Approval to all class
 7 members who object to the Agreement or file written notice with the Court that they
 8 intend to appear at the Fairness Hearing.

9 12. Claims from eligible class members must be received no later than
 10 December 4, 2023.

11 13. Class Counsel shall file their motion for an award of attorneys' fees and
 12 reimbursement of expenses or costs and a motion for case contribution awards to the
 13 class representatives no later than November 3, 2023. Class Counsel shall post these
 14 motions on the web page within three days after they are filed with the Court.

15 14. Class Counsel or the Notice and Claims Administrator shall establish a
 16 trust account into which Rapid Financial and Cache Valley Bank shall cause the
 17 Settlement Amount to be paid as set forth in the Settlement Agreement. The trust
 18 account shall constitute a "qualified settlement fund" within the meaning of Internal
 19 Revenue Code § 468B and Treas. Reg. § 1.468B-1, *et seq.* The Qualified Settlement Fund
 20 shall remain subject to the jurisdiction of the Court, until such time as the Settlement
 21 Amount is distributed pursuant to the Agreement and/or further order(s) of the Court.

22 15. Neither Defendants nor Defendants' counsel shall have any responsibility
 23 for the distribution of the Qualified Settlement Fund, or any application for attorneys'
 24 fees or reimbursement of expenses or for case contribution awards to the class
 25 representatives submitted by Class Counsel, and such matters will be considered
 26 separately from the fairness, reasonableness, and adequacy of the Agreement.

1 16. All reasonable expenses incurred in providing notice, as well as
2 administering the Qualified Settlement Fund, shall be reimbursed upon motion and
3 approval of the Court.

4 17. The Court reserves the right to adjourn the date of the Fairness Hearing
5 without further notice, and retains jurisdiction to consider further applications arising
6 out of or connected with the Agreement. The Court may approve the Agreement, with
7 such modifications as may be agreed to by the Parties, if appropriate, without further
8 notice to class members.

9 It is so ORDERED this 8th day of September, 2023.
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BENJAMIN H. SETTLE
United States District Judge

Presented by:

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/s/ Richard E. Spoonemore
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